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THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE DR. G.YETHIRAJULU

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WRIT APPEAL No.2464 OF 2005

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DATED: 16-12-2005

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Between:

G.Madhusudhan Reddy . . .Petitioner

And

G.Srinivas Reddy and another . . .Respondents

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JUDGMENT: (per BPR, J)

Heard Mr. Bankatlal Mandhani, learned counsel for the appellant, and also Mr.

P.Prabhakar Rao, learned counsel for the respondents. At their request, the appeal itself is taken up for disposal at the admission stage.

The appellant is the unsuccessful writ petitioner, who seeks to assail the orders, where under, the application filed by him seeking to decide the jurisdiction issue as preliminary, was dismissed by the Labour Court.

A few facts necessary for disposal of this case are as under:

The contesting respondent No.1 herein claiming to be as a worker, filed M.P.No.55 of 2002 under Section 33(C)(ii) of the Industrial Disputes Act, 1947, before the Labour Court, Warangal, seeking payment of arrears and other benefits from the appellant herein. In the said M.P., the appellant/writ petitioner filed I.A.No.296 of 2003 seeking to determine the question as to whether there was an employer-employee relationship between himself and the first respondent, as a preliminary issue. The Labour Court rejected the said I.A. stating that the said question can as well be decided along with other issues after recording all the evidence. Aggrieved by the same, the appellant herein preferred WP.No.18984 of 2004. The learned single Judge having found that all such questions, in fact, can be decided only as a part of the substantive adjudication of the main petition, but not as a preliminary issue, dismissed the same. Hence, this writ appeal.

The learned counsel for the appellant placed reliance upon certain principles laid down in **MUNICIPAL CORPORATION OF DELHI v. GANESH RAZAK**, **STATE OF UTTAR PRADESH v. BRIJPAL SINGH** and **THE DIVISIONAL SUPERINTENDENT, SOUTH CENTRAL RAILWAY, SEC'BAD v. THE LABOUR COURT, HYDERABAD**, whereunder, the scope of the enquiry has been considered *vis-à-vis* the other provisions of the Industrial Disputes Act. As already observed by the learned single Judge, there is no dispute as to the scope of the enquiry is limited. However, the fact remains that the question as to the existence of employer and employee relationship, which necessarily requires to be the one gone into only on facts, be it formal enquiry or otherwise. Without any such enquiry, the *prima facie* material produced on behalf of the respondent No.1 and the claim made by him cannot be thrown out mainly on the plea raised by the appellant herein taking it as a preliminary issue. It appears that the petitioner filed the above I.A. only to delay and to drag on the proceedings without any earlier adjudication. Therefore, we find no merit in the appeal.

The Writ Appeal is accordingly dismissed. However, it is made clear that the Labour Court is directed to dispose of the appeal as expeditiously as possible. There shall be no order as to costs.

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(B.PRAKASH RAO, J)

16th DECEMBER, 2005.

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(DR. G.YETHIRAJULU, J)

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